

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7209

BILL NUMBER: HB 1664

DATE PREPARED: Jan 18, 1999

BILL AMENDED:

SUBJECT: Pregnant women using illegal drugs.

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FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (A) *Protocol and Training:* This bill establishes maternal and newborn drug screening protocol to standardize testing of: (1) maternal patients for drug use during pregnancy; and (2) drug impaired newborns. The bill provides that the purpose of the drug screening protocol is to identify patients in need of special management: (1) to avoid various medical complications and developmental and nutritional deficiencies; and (2) to aid in the specific medical management of the newborn and to initiate appropriate developmental and social follow-up of the newborn. It lists factors for a physician to consider in deciding whether to order maternal or newborn drug testing. This bill specifies that no single indicator justifies maternal or newborn drug testing and that the decision to order the testing must be based on the physician's best medical judgment after considering the totality of the circumstances.

(B) *Treatment:* The bill requires the Division of Family and Children to do the following: (1) Develop procedures for child abuse and neglect investigations involving drug impaired fetuses and newborns. (2) Implement a plan to establish response teams for drug impaired fetuses and newborns throughout Indiana. It provides that whenever a child abuse or neglect case involves a drug impaired fetus or newborn, the local child protection service shall require the mother of the fetus or newborn to participate in a substance abuse treatment plan.

(C) *Placement:* This bill requires the response team for drug impaired infants to meet on a regular basis to: (1) review the status of the treatment plan and the progress of the family; and (2) recommend changes, if any. The bill requires the local child protection service to file a child in need of services petition or refer the case to the local prosecuting attorney, or both, if the mother refuses to voluntarily cooperate with the treatment plan.

(D) *Enforcement:* This bill provides that a person who knows or should reasonably know that the person is pregnant and knowingly or intentionally ingests cocaine, a narcotic drug, a controlled substance, marijuana, hash oil, or hashish without a valid prescription or order commits unlawful ingestion of a controlled

substance, a Class D felony.

This bill allows a prosecuting attorney to withhold prosecution against a person accused of unlawful ingestion of a controlled substance if: (1) the person agrees to the conditions of a pretrial diversion program agreement that requires the person to undergo drug abuse treatment in an approved drug abuse treatment program; and (2) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending.

Effective Date: July 1, 1999.

Explanation of State Expenditures: This fiscal analysis is based on the following information: (1) According to the Department of Health, Maternal and Child Health Statistics Report for 1996 the percentage of pregnant women testing positive for any drug is 4.3% in rural areas and 7% in urban areas. (2) In FY 1997, of all children found to be abused and neglected through a substantiated determination, 21% had a Child in Need of Services (CHINS) petition filed and 16% were placed in out-of-home care. (3) In Indiana there are approximately 85,000 births per year. (4) In FY 1997, 330 children were substantiated CHINS as a result of drug abuse by the mother.

(A) *Protocol and Training:* The State Department of Health estimates the cost of developing training materials for physicians and the copying and mailing of these materials to be \$12,500. These costs can be absorbed within the existing budget.

(B) *Treatment:* This bill provides that if the local child protection service substantiates child abuse or neglect involving a drug impaired fetus or newborn, the Division of Family and Children (DFC) is required to provide substance abuse treatment for the mother and other household members. Based upon the above information, the estimated number of women needing treatment ranges from 3,325 to 5,620. Based on the Division of Mental Health (DMH) managed care program for addiction services, the cost of treatment is approximately \$2,500 per person. Therefore, the estimated cost to provide substance abuse treatment to the mother, assuming these individuals would not enter the program without this bill, ranges from \$8,312,500 to \$14,050,000.

The bill requires, as part of the drug treatment plan, the DFC provide educational services regarding the effects of substance abuse on the fetus. The estimated cost of the educational services is \$180 per person. The estimated cost of educational services ranges from \$598,500 to \$1,011,600.

The bill also requires as part of the treatment plan that the mother submit to random testing for controlled substances. It is estimated that the mother will be tested four times a year at a cost of \$5 per test. The estimated cost of the random drug testing ranges from \$66,500 to \$112,400.

The **total cost** of the substance abuse treatment, the educational services, and the random drug testing ranges from \$8,977,500 to \$15,174,000. Table 1 shows a breakdown of state and federal costs for the previously mentioned services.

Table 1. Annual State and Federal Share and Total Costs of the Substance Abuse Treatment, Educational Services, and Random Drug Testing

	State Share	Federal Share	Total
Low Estimate (4.3%)	\$2,576,500	\$6,401,000	\$8,977,500
High Estimate (7.0%)	\$4,355,000	\$10,819,000	\$15,174,000

(C) *Placement*: The bill requires the DFC to protect the health and welfare of the fetus or newborn if the local child protection service substantiates child abuse or neglect involving a drug impaired fetus or newborn. Using the estimate of 21% of substantiated CHINS petitions filed during 1997, the range of newborns effected is from 698 to 1,180.

Based on the current case load standard of 35 cases per case manager, the DFC will need to hire between 20 and 34 new case managers. The federal government will fund 16% of these new positions at 61.01% share of the cost under the Title IV-E program. The estimated cost of salary, fringe benefits, and indirect costs for the above positions are illustrated in Table 2.

Table 2. State and Federal Share and the Total Costs for Salary, Fringe Benefits, and Indirect Costs for FY 2000 and FY 2001

	FY 2000 State Share	FY 2000 Federal Share	FY 2000 Total	FY 2001 State Share	FY 2001 Federal Share	FY 2001 Total
Low Estimate (4.3%)	\$740,926	\$80,150	\$821,076	\$737,823	\$79,815	\$817,638
High Estimate (7.0%)	\$1,259,575	\$136,255	\$1,395,830	\$1,254,823	\$135,685	\$1,389,984

The funds and resources for the positions required above could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. The December 31, 1998 manning table shows the Family and Social Services Administration has 283 vacancies. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

(D) *Enforcement*: This bill creates a Class D Felony if a person who knows or should reasonably know that the person is pregnant and knowingly or intentionally ingests cocaine, a narcotic drug, a controlled substance, marijuana, hash oil, or hashish without a valid prescription or order commits unlawful ingestion of a controlled substance. A Class D Felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A Misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,500 in FY 97. Individual facility expenditures range from \$11,000 to \$27,000. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually or \$5 daily per prisoner. The average length of stay in DOC facilities for all

Class D felony offenders is approximately seven months.

Explanation of State Revenues: (D) *Enforcement:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: (C) *Placement:* It is estimated that 16% of the newborns will need an out-of-home placement due to the requirements of this bill. The range of newborns effected is from 532 to 899. The cost of the placement is \$14 per day. Therefore, the cost of the out-of-home placement is estimated to be from \$2,718,520 to \$4,593,890. It is estimated that the federal government will pay for approximately 50% of these children at a share of 61%. Table 3 illustrates the estimated cost to paid by the counties and the federal government.

Table 3. Annual County and Federal Share and Total Costs for the Out-of-Home Placement of Newborns

	Counties Share	Federal Share	Total Costs
Low Estimate (4.3%)	\$1,889,371	\$829,149	\$2,718,520
High Estimate (7.0%)	\$3,192,754	\$1,401,136	\$4,593,890

(D) *Enforcement:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: (D) *Enforcement:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed, and if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Family and Social Services Administration, Division of Family and Children, State Department of Health, Department of Correction.

Local Agencies Affected: Counties, Trial courts, local law enforcement agencies.

Information Sources: Karen Kinder, Family and Social Services Administration, 232-5659, Norma Selby, State Department of Health, 233-7573, Indiana Sheriffs Association, Department of Correction.